IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6786 OF 2005

Shri Ramchandra V.Magar .. Petitioner.
Vs.
Shri Vijay V.Magar & Ors. .. Respondents.

Mr.S.S.Patwardan for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 28TH AUGUST, 2006

P.C.:

. Heard learned counsel for the petitioner, none present for the respondents, though served.

2. Rule, returnable forthwith.

3. This petition impugns the order dated 7.6.2005 by which application at Exhibit-85 filed by the petitioner seeking amendment of the written statement has been rejected. Mr.Patwardhan, learned counsel for the petitioner submits that the petitioner sought amendment of the written statement in view of the subsequent development. The suit is for partition and separate possession. The parties have several properties of the joint family. One of the properties was mortgaged with the bank when the suit was filed and that property was auctioned by the bank during pendency of the suit. After appropriating the sale proceeds for the satisfaction of loan, according to Mr.Patwardhan, the plaintiff has not brought the balance of sale proceeds in the common hotchpotch and

hence he has filed application for amendment of written statement for bringing that on record. It is true that in the partition suit all such questions can be considered at the stage of execution. However, looking to the stage of suit and development that has taken place during pendency of the suit I find no reason to reject the application seeking amendment of the written statement. It is now well settled that all the amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. The Supreme Court in **Rajesh Kumar Aggarwal & Ors. Vs. K.K.Modi & Ors. (2006) 4 SCC 385** has reiterated that the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such such an amendment is necessary to decide the real dispute between the parties. Keeping that in view and considering the fact that the suit is for partition of the joint family properties, the application for amendment of the written statement which is based on the subsequent development is allowed. The petitioner-defendant shall carry out the amendment within two weeks from today. The trial Court shall proceed with the suit and dispose of the same expeditiously. The petition is disposed of.

(D.B.Bhosale, J.)